

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

F&L VENTURES, INC.,
Debtor.

Case No. 94-53551 JRG
Chapter 7

SUZANNE L. DECKER, Chapter 7
Trustee and WELLS FARGO BANK,
N.A.,

Adversary No. 95-5697

Plaintiffs,

MEMORANDUM DECISION

vs.

FERENC BAKONYI, et al.,
Defendants.

I. INTRODUCTION

Following the denial of summary judgment motions in this action the court set a single issue for trial initially. The issue involved the effect of a December 31, 1994 Addendum to the partnership agreement between F&L and Boardroom. The initial question is whether the Addendum caused a dissolution of the partnership. For the reasons hereafter stated the court finds that a dissolution did occur.

II. FACTUAL BACKGROUND

1 F&L Ventures Inc. filed a voluntary petition under Chapter
2 11 on May 25, 1994.¹ F&L's principal asset was its 50%
3 partnership interest in a business known as Quality Laser Works.
4 Among F&L's creditors was Wells Fargo Bank which had obtained a
5 judgment against the debtor on May 19, 1994, in the amount of
6 \$106,696.99. Wells Fargo alleged that it held a perfected
7 security interest in the debtor's personal property including
8 the partnership interest in Quality Laser Works.

9 On December 6, 1994, Wells Fargo filed an emergency motion
10 by which it sought an order requiring F&L to cease using the
11 bank's cash collateral. The bank's motion was initially heard
12 on December 8, 1994, and further hearings were held on December
13 15 and 21, 1994. A stipulation for the conditional settlement
14 of the disputes among the parties was placed on the record on
15 December 15th and clarified on December 21st.

16 Basically, upon approval of the settlement Wells Fargo
17 would be given immediate relief from the automatic stay to
18 foreclose upon its collateral, the partnership interest in
19 Quality Laser Works. The bank would conduct a private sale of
20 the partnership interest under the California Commercial Code at
21 which it would sell the interest to Ferenc Bakonyi for
22 \$106,696.99 plus the bank's attorney's fees and interest to the
23 date of sale. The parties' agreement was to be documented by a
24 written agreement which was to be signed by all parties by
25 February 17, 1995. A motion seeking approval of the settlement
26

27 ¹ The court, on its own motion, has taken judicial notice of its own
28 pleadings and records in the underlying adversary proceedings as well as the
underlying bankruptcy case of F&L.

1 was to be filed by February 20, 1995 and court approval obtained
2 by March 15, 1995.

3 F&L's partner in Quality Laser Works was Boardroom
4 Information Systems, Inc. The partnership had existed since
5 1983. The partnership agreement provides that the partnership
6 would terminate at the end of three years unless there is a
7 written agreement to continue it. There is no evidence of such
8 an agreement but nevertheless, the partnership continued through
9 1994. On December 31, 1994, F&L and Boardroom executed an
10 "Addendum to partnership agreement." The Addendum recognized
11 the failure to extend the partnership in writing but stated that
12 there had been an oral agreement of extension continuously in
13 effect. The Addendum also made four amendments to the
14 partnership agreement, one of which was to "replace partner
15 named F&L Ventures, Inc. with Ferenc Bakonyi."

16 F&L filed its motion to approve the settlement with Wells
17 Fargo Bank which would result in transferring the Quality Laser
18 Works partnership to Ferenc Bakonyi. Notice to other creditors
19 of the proposal brought forth strenuous objections from Saroyan
20 and Saroyan Enterprises and Schneider & Wallerstein Law Corp.

21 In response to the objection, Ferenc Bakonyi filed a
22 declaration with the court on April 5, 1995. Mr. Bakonyi
23 confirms that he is the "president, chief executive officer, and
24 sole shareholder" of the debtor. On behalf of himself, and F&L,
25 he agrees to allow Wells Fargo Bank to foreclose on the Quality
26 Laser Works partnership interest and to acquire the interest
27 from the bank.
28

1 On April 20, 1995, the court sustained the creditors'
2 objections and denied the proposed settlement which would allow
3 F&L to transfer the Quality Laser Works partnership to Ferenc
4 Bakonyi through an intermediary, Wells Fargo Bank. On April 26,
5 1995, an order was entered converting the Chapter 11 case of F&L
6 to a case under Chapter 7. This adversary proceeding then
7 followed.

8 Suzanne Decker and Wells Fargo Bank have asserted several
9 claims against the defendants. The first claim for relief seeks
10 to avoid post-petition transfers pursuant to 11 U.S.C. § 549;
11 the second claim for relief seeks to avoid transfers in
12 violation of the stay of 11 U.S.C. § 362; the third claim for
13 relief seeks a turnover of property and an accounting under 11
14 U.S.C. § 542; and the fifth claim for relief alleges a breach
15 of fiduciary duty.

16 Plaintiffs' first and second claims for relief deal with
17 the purported transfer of F&L's partnership interest to Ferenc
18 Bakonyi on December 31, 1994, through the Addendum to the
19 partnership agreement. Both parties sought summary judgment
20 with respect to these claims. Plaintiffs argued that in
21 executing the agreement Bakonyi was wearing two hats. In one
22 capacity, he was acting on behalf of F&L and attempting to
23 transfer F&L's partnership to himself as an individual. Since
24 the transfer was unauthorized, the transaction is subject to
25 avoidance under § 549 and the estate is entitled to recover its
26 value under § 550. Secondly, plaintiffs argue that Bakonyi in
27 his individual capacity was attempting to seize an asset of the
28

1 estate. Since this was done in violation of the automatic stay,
2 they argue the action was void under In re Schwartz, 954 F.2d
3 569 (9th Cir. 1992).

4 On December 29, 1997, the court issued its Order On Summary
5 Judgment Motions in this case. In this order the court denied
6 the Third Motion for Summary Judgment filed by defendant Ferenc
7 Bakonyi and also denied the Joint Counter-Motion for Summary
8 Adjudication Against Bakonyi filed by Suzanne Decker and Wells
9 Fargo Bank.

10 While summary judgment and summary adjudication were
11 unavailable because a triable issue of fact existed, the court
12 was able to resolve certain issues. First, the court concluded
13 that the Chapter 11 filing by F&L did not dissolve the
14 partnership. Second, while the December 31, 1994 Addendum may
15 or may not have dissolved the partnership, if it did not, the
16 conversion of the F&L case to Chapter 7 had that effect.

17 **III. THE ISSUE FOR THIS EVIDENTIARY HEARING**

18 The court found a triable issue of fact as to whether the
19 December 31, 1994 Addendum dissolved the partnership.² What did
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21 ² In his deposition Ferenc Ledniczky testified that the Addendum was executed
22 on December 31, 1994, and was to become effective on January 1, 1995. At the
23 same time, he testified that he was aware that the transfer of the partnership
24 interest from F&L to Bakonyi was the result of a settlement between Bakonyi
25 and/or F&L and Wells Fargo Bank and that the settlement was subject to court
26 approval. He knew that approval had not yet been obtained and thought it might
27 come around January 15, 1995. He also knew that approval was thereafter delayed
28 and that there were creditor objections. And finally, he recognized that the
court might reject the settlement in which case he would "be open to choose a
different course."

Bakonyi testified in deposition that he knew the settlement agreement was
subject to court approval and that he initially thought approval would come on
January 12, 1995. Yet, he signed the settlement agreement that clearly provided
for approval to be obtained by March 15, 1995. His April 5, 1995, declaration
continues to seek approval of the transfer and states that "the debtor, and

1 Bakonyi and Ledniczky, acting on behalf of Boardroom, intend
2 through the execution of the Addendum. Did they intend to
3 effectuate an immediate transfer? Or, did they simply intend to
4 update and ready the partnership agreement for the anticipated
5 transfer of the partnership interest by the court later in 1995?³
6 Because of the narrowness of the issue the court bifurcated it
7 and set it separately for trial.

8 **IV. FINDINGS OF FACT**

9 The Partnership Agreement of Quality Laser Works, dated May
10 1, 1983, was effective from May 1, 1983, through December 31,
11 1994 and, as amended by the Addendum, from January 1, 1995
12 through April 1, 1996. This was the intent of Ferenc Bakonyi on
13 behalf of himself and on behalf of F&L. He was the only person
14 in control of F&L. This was also the intent of Ferenc Ledniczky
15 on behalf of himself and on behalf of Boardroom as he was the
16 only person in

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18 myself, as it's principal, have agreed to enter into an agreement for the sale
19 and purchase of the debtor's partnership interest in Quality Laser Works, and for
the compromise of the debtor's outstanding debt with Wells Fargo Bank."

20 Bakonyi now claims that it was entirely Ledniczky's idea to create a
21 partnership with him as an individual and that Ledniczky did not come up with the
22 proposal until the first week of January 1995. Ledniczky supposedly created the
23 proposal because Wells Fargo Bank was preventing F&L and Bakonyi from working at
24 Quality Laser Works. Yet, the settlement agreement authorizes the use of cash
collateral by F&L from December 1994 forward pending approval. In its
Supplemental Statement of Boardroom re Pending Motions for Summary Judgment
Boardroom argues that Bakonyi's testimony is "replete with inconsistencies."
Nevertheless, as there are conflicts in the testimony, credibility is at issue.
As such, a trial is required.

25 ³ A triable issue exists as to the intent of the parties in forming the
26 Addendum. This issue is determinative of whether the Addendum is void under
27 11 U.S.C. § 362 or voidable under 11 U.S.C. § 549. If the Addendum is void
28 then the Addendum caused no dissolution. However, if the Addendum is voidable
and assuming the Addendum in fact existed before the replacement, a
dissolution occurred under Cal. Corp. Code § 15029 because the Addendum
attempted to create a new partnership with a new beginning date.

1 control of Boardroom. When the Addendum became effective on
2 January 1, 1995, the parties intended to replace F&L with
3 Bakonyi as a 50% partner of Quality Laser Works as of January 1,
4 1995.

5 The parties' conduct corroborates this intent. From
6 approximately 1983 through March 31, 1996, Quality Laser Works
7 regularly distributed to each of its two partners 50% of all
8 excess cash, after expenses were paid or reserved for. The
9 partners referred to these distributions as "draws" or "splits."
10 From 1983 through January 18, 1995, all checks for these
11 distributions were made payable to Boardroom (or its
12 predecessor, Ferenc & Co., Inc.) as to 50% and F&L as to 50%.

13 Effective January 24, 1995, Quality changed this long
14 standing practice. Checks for distributions were still made
15 payable to Boardroom as to 50% but checks for the other 50% were
16 made payable to Ferenc Bakonyi personally. It is evident that
17 sometime between January 18, 1995, and January 24, 1995, Ferenc
18 Bakonyi instructed Victoria Gaffney, the person who usually
19 prepared the checks, to start making the checks payable to him
20 personally and she followed those instructions. Ferenc
21 Ledniczky was aware of the change and acquiesced to it. During
22 the same time period, Ferenc Bakonyi, individually, began acting
23 as a 50% partner of Quality. Quality, Boardroom and Ferenc
24 Ledniczky accepted him as such.

25 Thus, Bakonyi and Ledniczky, acting on behalf of Boardroom,
26 intended through the execution of the Addendum to create a new
27 partnership between Boardroom and Bakonyi in January 1995.

1 **V. DISCUSSION**

2 The court must determine whether the Addendum is void or
3 voidable. If the Addendum is void, then the Addendum has no
4 effect and did not cause a dissolution of the partnership. If
5 the Addendum is voidable, a dissolution may have occurred on
6 January 1, 1995 when it was to become effective.

7 Section 549(a)(2)(B) provides in relevant part, subject to
8 some limitations not relevant here, that a "trustee may avoid a
9 transfer of property of the estate... that occurs after the
10 commencement of the case... that is not authorized under this
11 title or by the court." See 11 U.S.C. § 549. If all the
12 requirements of § 549 are met, then the trustee may avoid the
13 unauthorized post- petition transfer. The court finds that all
14 the requirements of § 549 are satisfied.

15 "Transfer" includes "every mode, direct or indirect,
16 absolute or conditional, voluntary or involuntary, of disposing
17 of or parting with property or with an interest in property."
18 § 101(54). A disposal of the partnership interest occurred when
19 F&L parted from its 50% interest and Bakonyi received that
20 interest. Hence, there was a transfer.

21 The transfer was post-petition. It is undisputed that the
22 Addendum to the partnership agreement purporting to "replace"
23 F&L with Bakonyi individually was created and executed after the
24 bankruptcy case was filed. F&L filed its petition on May 25,
25 1994. The Addendum is dated December 31, 1994, to become
26 effective January 1, 1995.

27 The transfer involved property of the bankruptcy estate.
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1 Section 541 broadly defines property of the estate to include
2 "all legal or equitable interests of the debtor in property as
3 of the commencement of the case." See 11 U.S.C. § 541(a)(1). A
4 debtor's interest in a partnership is included in the bankruptcy
5 estate. Gilbert v. Davis (In re Gunter), 179 B.R. 74, 75
6 (Bankr. S.D. Ohio 1995), and citations therein. Given the broad
7 language of § 541(a)(1), F&L's 50% interest in the partnership
8 is property of the estate.

9 The transfer was unauthorized. The replacement of Bakonyi
10 in place of F&L was clearly not authorized by the court, or
11 authorized by statute. Court approval was required because the
12 transfer was outside the ordinary course of business and
13 therefore required a noticed hearing. No noticed hearing
14 occurred.

15 Thus, the execution of the Addendum was an unauthorized
16 post-petition transfer of property of the estate. In general,
17 the Bankruptcy Code makes all such transfers voidable by a
18 bankruptcy trustee.⁴ Norton Bankruptcy Law and Practice 2d, §
19 59:2, 59-3. 11 U.S.C. § 549 authorizes the trustee to avoid an
20 authorized transfer of property of the estate.⁵

21 The argument is made that because Bakonyi's attempt to
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23 ⁴ The Bankruptcy Code generally separates the issue of whether a transfer is
24 voidable from the issue of liability of a transferee. Id. at § 60:2, p. 60-3.

25 ⁵ Under 11 U.S.C. § 550, a trustee and an individual debtor are limited to
26 recovery of either the property transferred or its value. B&W Enterprises Inc.,
27 713 F.2d 534 (9th Cir. 1983), Norton Bankruptcy Law and Practice 2d, § 60:3, pp.
28 60-5, 60-6. Bankruptcy courts have held that the term value in § 550(a) means
fair market value. In Re Gleason, 139 B.R. 249 (Bankr. W.D. Wash. 1992); In Re
Vann, 26 B.R. 148, 149 (Bankr. S.D. Ohio 1982); See also Norton Bankruptcy Law
and Practice 2d., § 60:3, p.60-6, n.23 for computation of value under § 550.

1 transfer the partnership interest to himself was in violation of
2 the stay, it was void and without legal effect. In re Schwartz,
3 954 F.2d 569 (9th Cir. 1992). The 9th Circuit discusses the
4 potential conflict with interpreting the automatic stay as
5 voiding violations of § 362, with § 549 in Schwartz. The Court
6 reasoned that § 549 applies to unauthorized transfers of estate
7 property which are not otherwise prohibited by the Code, and
8 that in most circumstances § 549 applies to transfers in which
9 the debtor is a willing participant. The Court states in
10 dictum, "Section 362's automatic stay does not apply to sales or
11 transfers of property initiated by the debtor. Thus, section
12 549 has a purpose in bankruptcy beyond the potential overlap
13 with section 362. . . Although there are circumstances where
14 section 362 overlaps section 549 and renders it unnecessary,
15 this overlap falls far short of rendering section 549
16 meaningless." The Addendum is not void under § 362, rather it
17 is voidable under § 549.

18 The court must now determine whether this Addendum caused a
19 dissolution. Based on the evidence presented, the Addendum was
20 intended to create a new partnership. Cal. Corp. Code § 15029
21 defines dissolution and provides that "the dissolution of a
22 partnership is the change in the relation of the partners caused
23 by any partner ceasing to be associated in the carrying on as
24 distinguished from the winding up of the business." Here the
25 partner F&L ceased to be associated in the carrying on of
26 Quality Laser Works when the Addendum became effective on
27 January 1, 1995. This caused the dissolution of the partnership
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1 on that date.

2 **VI. CONCLUSION**

3 The court concludes that the Addendum was an unauthorized
4 post-petition transfer of property of the estate and is voidable
5 pursuant to § 549. Because the Addendum is voidable rather than
6 void, it exists and has legal effect. Because, based on the
7 evidence, the Addendum attempted to create a new partnership
8 with a new beginning date, a dissolution occurred pursuant to
9 Cal. Corp. Code § 15029. The court finds that the December 31,
10 1994 Addendum dissolved the partnership.